

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

AARON FLEMONS

PLAINTIFF

V.

CASE NO. 2:16-CV-2037

JOHN DEVANE, et al.

DEFENDANTS

OPINION AND ORDER

On July 16, 2024, an Order (Doc. 106) was entered denying Plaintiff Aaron Flemons's Fourth Motion to Reopen Case and Appoint Counsel (Doc. 105). Three months later, Mr. Flemons filed a Motion for Clarification (Doc. 107), inquiring whether any ruling had been made on his previous motion and stating that he had not received a copy of any such order in the mail. Mr. Flemons is currently incarcerated, and he noted "delays with legal mail at my unit." See *id.* at 1. The Court granted his Motion for Clarification on October 18, 2024, and directed the Clerk of the Court to mail Mr. Flemons a copy of the previous Order and a copy of the docket sheet. See Doc. 108.

On December 2, 2024, Mr. Flemons filed the motion that is currently before the Court, which he has styled a Motion to File Belated Notice of Appeal (Doc. 109). He explains that he was unable to file a timely notice of appeal from the Order denying his Fourth Motion to Reopen Case and Appoint Counsel because he did not receive timely notice of that Order. See *id.* Therefore, he asks that his deadline for filing a notice of appeal be extended.

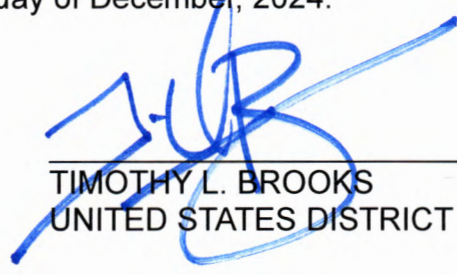
Mr. Flemons's deadline to file a notice of appeal has of course long expired, see Fed. R. App. P. 4(a)(1), as has his deadline to move for an extension of time to appeal, see *id.* at 4(a)(5)(A). However, the Federal Rules authorize this Court to "reopen the time

to file an appeal for a period of 14 days after” today, if it finds that each of the following three conditions is met: (1) that Mr. Flemons did not receive notice of the order from which he seeks an appeal within 21 days after its entry; (2) that Mr. Flemons’s instant motion was filed within 14 days after he ultimately received such notice; and (3) that no party would be prejudiced by reopening the time for him to file an appeal. See *id.* at 4(a)(6).

All three conditions are satisfied here. The first and third are obviously so from the discussion provided above, but the second requires some explanation. Mr. Flemons states that he received notice of the prior Order “on or around November 8, 2024,” which was a Friday. See Doc. 109, ¶ 4. However, Mr. Flemons drafted his instant Motion fifteen days later, on Saturday, November 23, 2024, see *id.* at p. 2; and it was postmarked on Tuesday, November 26, 2024, see *id.* at p. 4. So it may appear at first glance that his motion was untimely under Fed. R. App. P. 4(a)(6). However, because he received notice of the prior Order through the mail, three days must be added to the period within which he was required to file the instant motion. See Fed. R. Civ. P. 6(d). Therefore, his deadline to file the instant motion was actually Monday, November 25, 2024. His motion includes a signed and sworn declaration that he placed it “in the hands of [the prison] officials for mailing” to this Court on Sunday November 24, see Doc. 109, p. 2, and it was mailed to this Court in an envelope bearing a postmark showing that first-class postage was paid, see *id.* at p. 4. Therefore, Mr. Flemons may benefit from the “prison mailbox rule,” under which his motion “is deemed filed upon deposit in the prison mail system prior to the expiration of the filing deadline.” See *United States v. Harrison*, 469 F.3d 1216, 1217 (8th Cir. 2006); see also Fed. R. App. P. 4(c)(1)(A).

IT IS THEREFORE ORDERED that Plaintiff Aaron Flemons's Motion to File Belated Notice of Appeal (Doc. 109) is **GRANTED**, and his deadline to file a notice of appeal from this Court's prior Order denying his Fourth Motion to Reopen Case and Appoint Counsel is extended to **December 20, 2024**, which is fourteen days from the date of this instant Order's filing.

IT IS SO ORDERED on this 6th day of December, 2024.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE